

SUMMARY

II. PROPOSED GENERAL RULES OF THE PROBATE COURT

Rule ____ Probate Accounts

The subcommittee recommends adopting Probate Court Rule ____

Rule ____ has been added to the General Rules of the Probate Court. Rule ____ is intended to replace former Rule 72 of the Mass.R.Civ.P. Rule ____ includes many of the provisions of former Rule 72 of the Mass.R.Civ.P. that are not inconsistent with the Massachusetts Uniform Probate Code, G.L. c.190B, and was drafted with new provisions to conform to the new law.

Rule ____ Resignation of a Personal Representative

The subcommittee recommends adopting Probate Court Rule ____

The adoption of Rule ____ is to acknowledge the common law authority of the Probate Court to accept the resignation of a fiduciary and is adopted in light of the fact that the Massachusetts Uniform Probate Code, G.L. c. 190B, repealed G.L. c. 195, §13 (Resignation of executor or administrator) without enacting a new provision specifically authorizing the court to accept a resignation.

Rule ____ MUPC Magistrates; Scope of Delegable Duties; Effect of Orders Entered in Formal Proceedings

The subcommittee recommends adopting Probate Court Rule ____

This Rule is adopted as a result of the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B. Sections 62B and 62C of chapter 221 of the General Laws, inserted by St.1978, c. 478, §250, established the office of Magistrate in all Departments of the Trial Court and gave to that official certain quasi-judicial powers. This rule is not intended to expand or contract the powers which such statutory Trial Court Magistrates may exercise in the Probate and Family Court, but rather to create the new and separate position of MUPC Magistrate in that court.

Section (d) of this Rule, Effect of Orders Entered in Formal Proceedings, is intended to clarify the difference between an order entered by a magistrate in an informal proceeding and an order entered by a magistrate in an unopposed formal proceeding under the Code. The denial of a petition for informal probate or appointment by a magistrate cannot be appealed. Instead, the proponent may initiate a formal proceeding so that the matter may be brought before a judge in the normal way for contested matters.